



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL PETITION NO. 62 OF 2020

ANDREA OWUOR OBUOR.....PETITIONER

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

The Petitioner, **ANDREA OWUOR OBUOR**, was convicted for the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

1. During the hearing in relation to sentencing, the learned prosecution counsel, Ms Barasa submitted that the sentence prescribed for the offence of Murder, was mandatory.

2. On his part, Mr. Omolo, the learned advocate for the accused, drew the attention of the court to the fact that the accused was a very old man. He said that the accused was very remorseful for what had happened. It was the finding of the learned trial Judge as follows;

“The totality of the evidence is that the accused engaged in the fight with the deceased. He took a stick, hit the deceased and chased her from her homestead towards the homestead of PW2, where she collapsed and died from an internal injury resulting from the assault.”

3. The post mortem examination revealed that the cause of death was hypovolemic shock due to a ruptured spleen, which was attributed to the blunt physical trauma to the abdomen of the deceased.

4. After the learned trial Judge had given the accused the opportunity for mitigation, he made a determination of the sentence in the following words;

“The accused, Andrea Owuor Obudi, has been convicted of the murder of his wife, ELIZABETH AUMA OWUOR. He pleads leniency. I noted that he is an old man of 70 years.

The law however provides for only one sentence, and it is that of death. Accordingly, I sentenced ANDREA OWUOR OBUDI to death as by law.”

5. It is obvious that the trial court deemed the death penalty as mandatory.

6. Pursuant to the pronouncement by the Supreme Court in the case of **FRANCIS KARIOKO MURUATETU & ANOTHER Vs REPUBLIC, PETITION NO. 15 OF 2015**, the mandatory Death Sentence is unconstitutional. I therefore set aside the said sentence.

7. In re-sentencing the Petitioner, I have taken into account the circumstances in which the tragic incident happened. The Petitioner fought with his wife over the sum of Kshs 200/= which he wanted her to pay back to him. He had used the money to repair her house.

8. The wife abused the Petitioner, giving rise to the fight.

9. He picked up a piece of wood which was lying nearby, where their son was splitting firewood. The Petitioner used the pice of wood to hit the deceased.

10. Although the deceased did not sustain any fractures or any other injuries that could be seen externally, she suffered a ruptured spleen.

11. I have also taken into account the fact that the Petitioner was 72 years when the offence was committed.

12. Considering that that was his first criminal offence, at the ripe old age of 72, it follows that the conduct of the Petitioner, prior to that single incident, was generally good.

13. Having taken into account the unique circumstances of the ailing and elderly Petitioner, who has been in prison custody for 10 years, I hold the considered view that the Petitioner has already received sufficient punishment. I therefore sentence him to imprisonment for the period he has already served.

14. It is so ordered.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 7TH DAY OF JULY 2021

FRED A. OCHIENG

JUDGE